



May 12, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2000-1867

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136145.

The Texas Department of Transportation (the "department") received a written request for information pertaining to the acquisition of land for the "East-West Freeway" in Lubbock, Texas. Specifically, the requestor seeks the name and address of every landowner of parcels "for which [the department] has yet to contract appraisal work." You contend that the requested information is excepted from disclosure under section 552.105(2) of the Government Code.

Section 552.105(2) of the Government Code excepts from required public disclosure "information *relating to* . . . appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property." (Emphasis added.) Section 552.105 protects information, the release of which would impair or tend to impair the governmental body's "planning and negotiating position in regard to particular transactions." Open Records Decision No. 222 (1979).

Whether particular information falls under the protection of section 552.105 is a question of fact, and the attorney general will accept a governmental body's good faith determination that release of certain information would damage its future negotiating position, unless the contrary is clearly shown as a matter of law. Open Records Decision No. 564 (1990). You assert that the requested information pertains to real property that the department plans to purchase for the referenced highway project. You contend that release of the information could adversely affect the purchase price of such property by revealing the precise location of the property. After examining your arguments and the information you have submitted, we find that section 552.105 is applicable in this instance. The department therefore may withhold the submitted information at this time under section 552.105 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

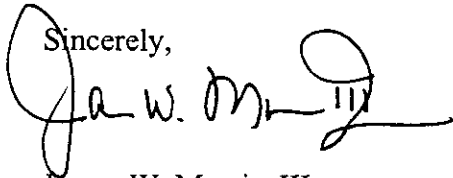
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ja W. Morris III", written over the word "Sincerely,".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/pr

Ref: ID# 136145

Encl. Submitted documents

cc: Mr. Mark Heidenheimer, P.L.L.C.
2411 Virginia Parkway, Suite 7
McKinney, Texas 75070
(w/o enclosures)